

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ABRIAN FAVORS and
SHOWCASING MEDIA,

Plaintiffs,

v.

Case No. 21-12387

ISABELLA CASILAS GUZMAN, and
KELSEY D. DAVIS,

Defendants.

**OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF FROM
JUDGMENT AND DENYING PLAINTIFF'S MOTION TO ALTER OR AMEND ORDER**

On March 25, 2022, the court issued an order directing Plaintiff to show cause why this case should not be dismissed for failure to serve or for lack of prosecution. (ECF No. 11.) In its March 25 order, the court explained that there was “no indication that Defendants actually received the documents or that [Plaintiff] attempted to serve the United States under Rule 4(i).” (*Id.*, PageID.40.) Subsequently, on April 28, 2022, the court held that Plaintiff failed to proffer any evidence that demonstrates proper service, noting especially that there was “no indication that Plaintiff attempted to serve the United States” as required under Rule 4(i), and that Plaintiff provided “no explanation as to why he has failed to do so.” (ECF No. 13, PageID.49.) For these reasons, and in light of Plaintiff’s failure in response to the court’s April 28 order to “even express an intent” to comply with Rule 4(i), the court dismissed Plaintiff’s complaint.

Before the court are two motions filed by Plaintiff Abrian Favors. (ECF Nos. 14,

15.) The first is styled as a motion for relief under Federal Rule of Civil Procedure 60(b)(2) (ECF No. 14), while the second is styled as a motion to alter or amend the court's order pursuant to Rule 59(e). (ECF No. 15.) Each of the motions requests that the "court accept . . . the newly discovered certified mailing evidence" purporting to show that he "properly served" Defendants. (ECF No. 14, PageID.53; ECF No. 15, PageID.55.)

Under Rule 60(b)(2), "the court may relieve a party . . . from a final judgment" where there is "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." A court may also "alter or amend a judgment" under Rule 59(e) where a plaintiff clearly establishes "a manifest error of law" or presents "newly discovered evidence." *Direct Constr. Servs., LLC v. City of Detroit, Mich.*, 820 F. App'x 417, 429 (6th Cir. 2020) (citing *Roger Miller Music, Inc. v. Sony/ATV Publ'g, LLC*, 477 F.3d 383, 395 (6th Cir. 2007)).

The only "new" information or evidence that Plaintiff has presented is a returned certificate of service demonstrating that Defendant Isabella Casilas Guzman, the Administrator of the United States Small Business Administration, was served. (ECF No. 16.) But this new "evidence" does nothing to warrant any relief from the court's dismissal of the action, particularly because Plaintiff, again, has completely failed to address any attempt to properly serve the United States as expressly required by the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 4(i). The court has twice notified Plaintiff of his obligation to serve the government under Rule 4(i), but Plaintiff still has wholly failed to acknowledge this requirement; relief from the court's judgment is not appropriate. See *Walker v. Donahoe*, 528 F. App'x 439, 440 (6th Cir. 2013); *Evans v.*

Comm'r, No. CIV. 13-64-ART, 2014 WL 2795472, at *1 (E.D. Ky. May 30, 2014) (dismissing suit against government actor where a *pro se* plaintiff failed to effectuate service under Rule 4(i) and ignored prior warning that failure to do so could lead to dismissal). This case remains closed, having been dismissed without prejudice.

Accordingly,

IT IS ORDERED that Plaintiff's "Motion for Relief" (ECF No. 14) and "Motion to Amend" (ECF No. 15) are DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: July 25, 2022

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 25, 2022, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(810) 292-6522

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